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10/004,664**D. REMARKS***Interview Summary*

On February 21, 2005, Applicants' representative requested a telephone interview with Examiner Ubiles to discuss the incomplete rejection of claim 2 and other issues. In addition, on February 24, Applicants' representative again requested an interview with Examiner Ubiles. On February 25, the Examiner called to answer the question as to claim 2. No exhibits were shown, nor demonstrations conducted. The prior art cited against claim 2 is Busey (US Patent 6,665,395) (hereafter referred to as Busey).

In particular, in the interview requests Applicants' representative noted that the rejection of claim 2 is incomplete. On page 3 of the Office Action, the last sentence in the rejection of claim 2 reads "The limitation specifying "...during a prior call made before a current..." and stops. Applicants requested that the Examiner complete the rejection. The Examiner responded that the rejection should have continued to explain that "it was obvious that this read into the customer level ranking service" described in rejection of claim 1 and that the limitation is one that is known in the art. The Examiner provided an example that a caller could have a "platinum" classification earned based on previous call incidents.

Applicants' representative argued that the Examiner's supplement to the rejection does not address the actual elements of claim 2 as previously amended. In particular, claim 2 reads: detecting said advancement token earned by a caller by participating in at least one from among a competition, a survey, and a redemption of membership points during a prior call made before a current call by said caller positioned in said calling queue (underlining shows the previous amendment made to the claim in response to the first office action). Applicants' representative argued that the Examiner's rejection does not address the actual limitation that the advancement token used by the caller in a current call was earned by the caller participating in a redemption of membership points during a prior call. Applicants' representative argued that this limitation is not taught by Busey or obvious in view of Busey. In addition, Applicants' representative argued

AUS920010947US1

22

PATENT
10/004,664

that this limitation is not taught by the Examiner's example of a caller classification earned based on previous call incidents.

Responsive to Applicants' arguments, the Examiner agreed on February 24, 2005 to request that a new office action be issued to correct the issue as to claim 2. On March 1, 2005, however, the Examiner stated that only an interview summary would be issued and Applicants would need to respond to the present Office Action and that the Examiner would ask her supervisor how to respond to Applicants' response. In conclusion, no agreement with respect to the claims was reached. Applicants are filing this response for further review by the Examiner.

Specification

Applicants have amended the specification above to indicate the issuance of a cross-referenced patent.

35 USC § 103(a)

Claims 1-3, 6, 9-13, 16, 19-24, 27-29, 39, 41, 51, 53, and 57

The Office Action rejects claims 1, 3, 6, 9-13, 16, 19-24, 27-29, 39, 41, 51, 53, and 57 under 35 U.S.C. §103(a) as being allegedly unpatentable over Busey. [Office Action, p. 2] The rejection is respectfully traversed.

Claims 1, 11, and 21

With regards to claims 1, 11, and 21, independent method claim 1, which is representative of independent system claim 11 and independent computer program product claim 21, with regard to similarly recited subject matter and rejection, reads as follows:

- 1.(Previously Amended) A method for caller position adjustment within a calling queue comprising:
 - detecting, at a calling queue, an advancement token earned by a caller; and
 - responsive to calculating a redemption value of said advancement token, adjusting a position of said caller according to said redemption value within said

AUS920010947US1

23

PATENT
10/004,664

calling queue, such that said caller is allowed control over said position within said calling queue.

The Examiner carries the burden of proving a prima facie case of obviousness for a 103(a) rejection. In particular, in establishing a prima facie case of obviousness under 103(a), the combined prior art references must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.3d 488, 20 USPQ2d 1438 (Fed Cir. 1991). In particular, in determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). Appellants respectfully assert that the Examiner does not show and the references do not teach or suggest, separately or in combination, detecting, at a calling queue, an advancement token earned by a caller or responsive to calculating a redemption value of said advancement token, adjusting a position of said caller according to said redemption value within said calling queue. In addition, Applicants respectfully assert that there is not any suggestion or motivation, in Busey or in the knowledge generally available to one of ordinary skill in the art, to modify Busey to teach the claimed invention.

The Examiner cites col. 12, lines 31-42 of Busey as teaching “a method for caller position adjustment within a hold queue,” “detecting at a calling queue an advancement token earned by a caller,” and “said caller is allowed control over said position within said calling queue.” Col. 12, lines 31-42 of Busey read:

“Another refinement is to assign calls based on customer ranking. For example, a customer ranking according to level of service (e.g. whether the customer is a “gold,” “platinum,” overly-repetitive, etc. customer) can be implemented to assign a number of customers that allows a customer to be moved up in a queue, to be assigned to a different queue, or to other wise gain priority over other customer calls. For example, customers who have emergency situation can be passed through to an agent regardless of their position in a queue. Or even regardless of the availability of agents according to the normal approach using the ratios above.”

AUS920010947US1

24

PATENT
10/004,664

In particular, the Examiner cites Busey as teaching “a method that allows a customer to be moved up a queue or gain priority over other customers” and cites this teaching as reading on a method for caller position adjustment within a calling queue. In addition, in particular, the Examiner cites Busey as teaching “the features may be implemented in accordance to customer ranking according to a level of service – e.g. gold, platinum, overly-repetitive customer” and cites this teaching as reading on detecting, at a calling queue, an advancement token earned by a caller. [Office Action, p. 2] Further, the Examiner cites Busey as teaching “that customers who have emergency situations can be passed through to an agent” and cites this teaching as reading on said caller is allowed control over said position within said calling queue. [Office Action, p. 2] The Examiner then states:

While Busey does not directly mention “responsive to calculating a redemption value of said advancement token, adjusting a position of said caller according to said redemption value within said calling queue”; it would have been obvious to one of ordinary skill to “calculate a redemption value” from the “advancement token” (or level of service) in order to perform the functions discussed above; since it is known in the art several “gold” or “platinum” customer level of service provide rewards to preferred customers based on points accumulated by, for example, dollars spent over a certain period of time. [Office Action, pp. 2-3]

Busey does not teach or suggest detecting, at a calling queue, an advancement token earned by a caller

Applicants assert that detecting at a calling queue an advancement token earned by a caller is not obvious because Busey does not teach an advancement token earned by a caller. The Examiner cites a customer ranking according to “level of service” taught in Busey as teaching an advancement token earned by a caller. Busey describes this “level of service” as associated with whether a customer is classified as a “gold” or “platinum” customer. Applicants assert, however, that a level of service, such as “gold” or “platinum,” does not teach a redeemable advancement token earned by a caller. In particular, there is no indication in the teachings of Busey or statements by the Examiner that a caller earns or how a caller earns a “gold” or “platinum” classification. In contrast, the present invention teaches an advancement token earned by a caller, not merely a classification status. Because Busey only teaches that a

AUS920010947US1

25

PATENT
10/004,664

level of service is available, and not earned, Busey does not teach an advancement token earned by a caller.

Responsive to calculating a redemption value of said advancement token, adjusting a position of said caller according to said redemption value within said calling queue is not obvious in view of Busey

Applicants assert that responsive to calculating a redemption value of said advancement token, adjusting a position of said caller according to said redemption value within said calling queue is not obvious in view of Busey because when the claim is taken as a whole, the level of service of Busey does not teach or suggest a redeemable advancement token earned by a caller.

First, when read as a whole, claim 1 teaches a redeemable advancement token earned by a caller. In particular, “redeem” is defined as “to turn in (coupons, for example) and receive something in exchange” (The American Heritage Dictionary of the English Language, Fourth Edition, copyright 2000 by Houghton Mifflin Company). Busey merely teaches and suggests ordering by level of service, not turning in or exchanging something for an advancement in position. In contrast, the present invention teaches an advancement token that is redeemed and upon redemption a value of the advancement token for the advancement of positions within a call queue is calculated.

Second, when read as whole, claim 1 teaches a redeemable advancement token where the meaning of token teaches away from an interpretation of an advancement token as a level of service. In particular, within the context of a computer system, the term “token” has meaning within what is known in the art as a data object or message that circulates between systems, not merely a classification or level of service. In particular, within the art as defined by the Microsoft Computing Dictionary token means “a unique structured data object or message that circulates continuously among the nodes of a token ring and describes the current state of the network. Before any node can send a message, it must first wait to control the token.” (Microsoft Computing Dictionary, 3rd edition, copyright 1997, p. 470, 5th edition, copyright 2002, p. 522). Applicants apply the concept of network tokens to the present invention where an advancement token is “a record of the type of token advancement system utilized, the type of
AUS920010947US1

PATENT
10/004,664

action performed by the caller, and any resulting change in position promised by the token advancement system.” (Specification, page 13, lines 8-12). Busey’s teaching of a level of service does not suggest a receivable and redeemable advancement token.

Third, the Examiner’s citation of what is known in the art is not suggested by Busey and is a citation of common knowledge without proper supporting references. In particular, the Examiner states that “it is known in the art several “gold” or “platinum” customer level of service provide rewards to preferred customers based on points accumulated by, for example, dollars spent over a certain period of time.” [Office Action, p. 3] The suggestion to make the claimed invention must be found in the prior art, not based on the Applicants’ disclosure. *In re Vaeck*, 947 F.3d 488, 20 USPQ2d 1438 (Fed Cir. 1991). Applicants assert, that Busey does not teach and Busey does not suggest the need for rewards because a level of service classification is used for ordering callers; Busey does not suggest and the citation of what is known in the art do not teach the redemption of a reward for advancement in position. In addition, Applicants traverse the Examiner’s assertion that “it is known in the art several “gold” or “platinum” customer level of service provide rewards to preferred customers based on points accumulated by, for example, dollars spent over a certain period of time” as a reliance by the Examiner solely on “common knowledge” in the art as defined in MPEP 2144.03 without proper evidentiary support for this knowledge in the art at the time the invention was filed. Because the Examiner improperly relies on “common knowledge” without supportive references, Applicants request that the Examiner provide proper supporting documents.

Fourth, the Examiner does not show how Busey teaches or suggests or how what is “common knowledge” teaches or suggests calculating a redemption value from an advancement token. Busey does not teach calculating a redemption value, but merely a service level plan for ordering callers. The “common knowledge” citation by the Examiner is insufficient for lack of supportive references and does not teach or suggest calculating a redemption value from an advancement token, but merely refers to one way that a customer could receive a particular ranking of a level of service.

AUS920010947US1

27

PATENT
10/004,664

In conclusion, for the foregoing reasons, Applicants respectfully assert that prima facie obviousness is not established for claims 1, 11, and 21 because at least one element of each of claims 1, 11, and 21 is not taught or suggested by Busey, separately or in combination with what would have been obvious to one with ordinary skill in the art at the time of the invention, under 35 U.S.C. §103(a). Because a prima facie case of obviousness is not established, Applicants respectfully request that Examiner reverse the rejection of claims 1, 11, and 21 and allow the claims.

Claims 6, 9, 19, 24, and 27

Because prima facie obviousness is not established for claims 1, 11, and 21, at least by virtue of their dependency on claims 1, 11, and 21, Busey does not teach or suggest the features of dependent claims 6, 9, 19, 24, and 27 under U.S.C. §103(a). Because a prima facie case of obviousness is not established for claims 6, 9, 19, 24, and 27, Applicants respectfully request allowance of claims 6, 9, 19, 24, and 27.

Additionally, Applicants note that the Examiner rejects claims 6 and 24, for the same reasons as applied to claim 1. [Office Action, p. 3] Dependent claims 6 and 24, however, cite subject matter not covered in the rejection of claim 1. In particular, dependent method claim 6, which is representative of the dependent program product claim 24, with regard to similarly recited subject matter and rejection, reads as follows:

6. (Original) The method for caller position adjustment within a calling queue according to claim 1, wherein adjusting said position further comprises:
adjusting said position of a call within said calling queue while said call is located at a token advancement system.

The Examiner does not specify how Busey teaches or suggests and neither Busey nor what would have been obvious to one with ordinary skill in the art at the time of the invention, separately or in combination, teaches or suggests transferring said token to said call hold queue while maintaining said call at a token advancement system. In particular, Busey et al. teaches a call hold queue and ordering of callers within the call hold queue, but does not describe transferring the advancement token to the call hold queue while maintaining a call at a token

AUS920010947US1

PATENT
10/004,664

advancement system. Therefore, Applicants respectfully assert that prima facie obviousness is not established for claims 6 and 24 because at least one element of claim 6 and 24, separately or in combination with claims 1 and 21, is not taught or suggested by Busey, separately or in combination with what would have been obvious to one with ordinary skill in the art at the time of the invention, under 35 U.S.C. §103(a). Because a prima facie case of obviousness is not established, Applicants respectfully request that Examiner reverse the rejection of claims 6 and 24 and allow the claims.

Claims 29, 39, 41, and 53

The Examiner rejects claims 29, 39, 41, and 53 for the same reasons as applied to claim 1. [Office Action, p. 3] Claims 29, 41, and 53, however, do not recite the same subject matter as claim 1. In particular, independent method claim 29, which is representative of independent system claim 41 and independent program product claim 53, with regard to similarly recited subject matter and rejection, reads as follows:

29. (Previously Amended) A method for earning an adjustment in a position within a call hold queue, comprising:
 receiving at least one call transferred from a call hold queue;
 enabling a caller of said at least one call to participate in at least one position adjustment service; and
 responsive to a result of said caller participation in said at least one position adjustment service, transferring a token for directing adjustment of a position of one from among said at least one call and a future call within said call hold queue.

Applicants assert that claims 29, 39, 41, and 53 do not teach the same elements as claim 1 and that the Examiner does not specify in the rejection of claim 1 nor does Busey or what is known by one with skill in the art at the time of the invention teach or suggest enabling a caller of said at least one call to participate in at least one position adjustment service or responsive to a result of said caller participation in said at least one position adjustment service, transferring a token for directing adjustment of a position of one from among said at least one call and a future call within said call hold queue. In particular, Busey teaches a call hold queue where callers may be ordered in the queue according to a
 AUS920010947US1

PATENT
10/004,664

level of service (Busey, col. 12, lines 31-42). The Examiner does not specify how Busey teaches or suggests and neither Busey or what would have been obvious to one with ordinary skill in the art at the time of the invention, separately or in combination, teaches or suggests enabling a caller to participate in a position adjustment service or the transfer of a token for directing adjustment of a position of the current call or a future call within the hold queue. In conclusion, for the foregoing reasons, Applicants respectfully assert that prima facie obviousness is not established for claims 29, 41, and 53 because at least one element of each of claims 29, 41, and 53 is not taught or suggested by Busey, separately or in combination with what would have been obvious to one with ordinary skill in the art at the time of the invention under 35 U.S.C. §103(a). Because a prima facie case of obviousness is not established, Applicants respectfully request that Examiner reverse the rejection of claims 29, 41, and 53 and allow the claims.

Regarding claim 39, the Examiner rejects claim 39, which is dependent upon claim 29, for the same reasons as claim 1. Applicants respectfully request allowance of dependent method claim 39, at least by virtue of its dependency on allowable method claim 29. In addition, Applicants assert that the Examiner does not specify in the rejection of claim 1 nor does Busey or what is known by one with skill in the art at the time of the invention teach or suggest claim 39 which reads:

39. (Original) The method for earning an adjustment according to claim 29, wherein transferring a token further comprises:
transferring said token to said call hold queue while maintaining said call at a token advancement system.

The Examiner does not specify how Busey teaches or suggests and neither Busey nor what would have been obvious to one with ordinary skill in the art at the time of the invention, separately or in combination, teaches or suggests transferring said token to said call hold queue while maintaining said call at a token advancement system. Therefore, Applicants respectfully assert that prima facie obviousness is not established for claim 39 because at least one element of claim 39, separately or in combination with claim 29, is not taught or suggested by Busey, separately or in combination with what would have been obvious to one with ordinary skill in the

AUS920010947US1 30

PATENT
10/004,664

art at the time of the invention under 35 U.S.C. §103(a). Because a prima facie case of obviousness is not established, Applicants respectfully request that Examiner reverse the rejection of claim 39 and allow the claims.

Claims 2, 12, and 22

Because prima facie obviousness is not established for claims 1, 11, and 21, at least by virtue of their dependency on claims 1, 11, and 21, Busey does not teach or suggest the features of dependent claims 2, 12, and 22 under U.S.C. §103(a). Because a prima facie case of obviousness is not established for claims 2, 12, and 22, Applicants respectfully request allowance of claims 2, 12, and 22.

Additionally, Applicants note that the Examiner rejects claims 2, 12, and 22 for the same reasons as applied to claim 2. [Office Action, p. 3] Dependent method claim 2, which is representative of the dependent system claim 12 and the dependent program product claim 22, with regard to similarly recited subject matter and rejection, reads as follows:

2. (Previously Amended) The method for caller position adjustment within a calling queue according to claim 1, wherein detecting an advancement token further comprises:
detecting said advancement token earned by a caller by participating in at least one from among a competition, a survey, and a redemption of membership points during a prior call made before a current call by said caller positioned in said calling queue.

The Examiner cites Busey as teaching “moving up in a queue or prioritize a customers call based on customer’s ranking based on level of service” and cites this teaching as reading on “detecting said advancement token earned by a caller by participating in a redemption of membership points during a prior call made before a current call by said caller positioned in a call queue.” [Office Action, p. 3] In addition, as discussed in the interview summary, the Examiner states “the limitation specifying ‘...during a prior call made before a current...’” but does not complete the rejection. [Office Action, p. 3] In the interview, the Examiner stated that this limitation is obvious because it reads on the customer level ranking service. For example,

AUS920010947US1

31

PATENT
10/004,664

the Examiner noted during the interview that a caller could earn a ranking based on previous call incidents.

Applicants respectfully assert that neither the rejection cited by the Examiner nor Busey nor what would have been obvious to one with ordinary skill in the art at the time of the invention, separately or in combination, teaches or suggests detecting said advancement token earned by a caller by participating in at least one from among a competition, a survey, and a redemption of membership points during a prior call made before a current call by said caller positioned in said calling queue. In particular, the Examiner focuses on the claim as reading “detecting said advancement token earned by a caller participating in a redemption of membership points during a prior call made before a current call by said caller positioned in said calling queue.” The Examiner stated, during the interview, the example of a caller earning a ranking during a prior call as teaching the claimed limitation. Applicants respectfully assert, however, that earning a ranking during a prior call does not teach an advancement token earned by a redemption of membership points during a prior call. Further, as previously described with reference to claim 1, when claims 1 and 2 are considered as a whole, Applicants respectfully assert that the ranking or level of service as taught by Busey does not read on an advancement token and that Busey does not teach or suggest membership points or that a caller can earn an advancement token by redeeming membership points and then redeem that token during a later phone call for an advancement in hold queue position. Therefore, Applicants respectfully assert that prima facie obviousness is not established for claims 2, 12, and 22 because at least one element of each of claims 2, 12, and 22, separately or in combination with claims 1, 11, and 21, is not taught or suggested by Busey, separately or in combination with what would have been obvious to one with ordinary skill in the art at the time of the invention under 35 U.S.C. §103(a). Because a prima facie case of obviousness is not established, Applicants respectfully request that Examiner reverse the rejection of claims 2, 12, and 22 and allow the claims.

AUS920010947US1

32

PATENT
10/004,664

Claims 3, 13, 16, 23, 51, and 57

Because prima facie obviousness is not established for claims 1, 11, and 21, at least by virtue of their dependency on claims 1, 11, and 21, Busey does not teach or suggest the features of dependent claims 3, 13, 16, and 23 under U.S.C. §103(a). Because a prima facie case of obviousness is not established for claims 3, 13, 16, and 23, Applicants respectfully request allowance of claims 3, 13, 16, and 23. In addition, because prima facie obviousness is not established for claims 41 and 53, at least by virtue of their dependency on claims 41 and 53, Busey does not teach or suggest the features of dependent claims 51 and 57 under U.S.C. §103(a). Because a prima facie case of obviousness is not established for claims 51 and 57, Applicants respectfully request allowance of claims 51 and 57.

In addition, the Examiner rejections claims 13, 16, 23, 51, and 57 for the same reasons as claim 3. [Office Action, p. 3] Dependent method claim 3 reads as follows:

3. (Original) The method for caller position adjustment within a calling queue according to claim 1, wherein detecting an advancement token further comprises:
detecting said advancement token from a token advancement system communicatively connected to said calling queue.

The Examiner cites Busey as teaching “functions performed by the Web Center” in col. 11, line 16 through col. 12, line 40” and cites this teaching as reading on “detecting said advancement token from a token advancement system communicatively connected to said calling queue.” [Office Action, p. 3] Applicants respectfully assert that because Busey does not teach advancement tokens, Busey also does not teach detecting an advancement token at a calling queue from a token advancement system. The Examiner does not specify, nor does Busey indicate that any of the functions performed by the Web Center would include transferring advancement tokens to the calling queue. The Web Center transfers calls and statistics, not advancement tokens, that when redeemed, enable the caller to advance in position within a call queue.

AUS920010947US1

33

PATENT
10/004,664

Further, Applicants note that a prima facie case of obviousness is not established for claims 3, 13, 16, 23, 51, and 57 and Applicants respectfully request that Examiner reverse the rejection of claims 3, 13, 16, 23, 51, and 57 and allow the claims.

Claims 10, 20, and 28

Because prima facie obviousness is not established for claims 1, 11, and 21, at least by virtue of their dependency on claims 1, 11, and 21, Busey does not teach or suggest the features of dependent claims 10, 20, and 28 under U.S.C. §103(a) or teach or suggest the features of the combination of claims 1, 11, and 21 with claims 10, 20, and 28, respectively. Because a prima facie case of obviousness is not established for claims 10, 20, and 28, Applicants respectfully request allowance of claims 10, 20, and 28.

Claims 4, 7, 14, 17, 25, 40 and 52

The Examiner rejects claims 4, 7, 14, 17, 25, 40, and 52 under 35 U.S.C. §103(a) as being allegedly unpatentable over Busey in view of Walker et al. (US 6,178,240). [Office Action, pp. 4-6] Applicants respectfully assert that because prima facie obviousness is not established for claims 1, 11, and 21, at least by virtue of their dependency on claims 1, 11, and 21, Busey does not teach or suggest the features of dependent claims 4, 7, 14, 17, and 25 under U.S.C. §103(a) or teach or suggest the features of the combination of claims 1, 11, and 21 with claims 4, 7, 14, 17, and 25 respectively. Because a prima facie case of obviousness is not established for claims 4, 7, 14, 17, and 25, Applicants respectfully request allowance of claims 4, 7, 14, 17, and 25. Additionally, with regard to claims 40 and 52, Applicants respectfully assert that because prima facie obviousness is not established for claims 29 and 41, at least by virtue of their dependency on claims 29 and 41, Busey does not teach or suggest the features of dependent claims 40 and 52 under U.S.C. §103(a) and therefore Busey in view of Walker et al. also does not teach or suggest the features of the combination of claims 29 and 41 with claims 40 and 52 respectively. Because a prima facie case of obviousness is not established for claims 40 and 52, Applicants respectfully request allowance of claims 40 and 52.

AUS920010947US1

34

PATENT
10/004,664

Claims 8, 18, and 26

The Examiner rejects claims 8, 18, and 26 under 35 U.S.C. §103(a) as being allegedly unpatentable over Busey in view of Walker et al. (WO 98/35507). [Office Action, p. 6] Applicants respectfully assert that because prima facie obviousness is not established for claims 1, 11, and 21, at least by virtue of their dependency on claims 1, 11, and 21, Busey does not teach or suggest the features of dependent claims 8, 18, and 26 under U.S.C. §103(a) and therefore Busey in view of Walker et al. also does not teach or suggest the features of the combination of claims 1, 11, and 21 with claims 8, 18, and 26 respectively. Because a prima facie case of obviousness is not established for claims 8, 18, and 26, Applicants respectfully request allowance of claims 8, 18, and 26.

In addition, Applicants respectfully traverse the rejection of claims 8, 18, and 26. Dependent method claim 8, which is representative of the dependent system claim 18 and the dependent program product claim 26, with regard to similarly recited subject matter and rejection, reads as follows:

8. (Original) The method for caller position adjustment within a calling queue according to claim 1, further comprising:
returning an unused portion of said advancement token to a promotion system for storage in association with said caller.

The Examiner carries the burden of proving a prima facie case of obviousness for a 103(a) rejection. In particular, in establishing a prima facie case of obviousness under 103(a), the combined prior art references must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.3d 488, 20 USPQ2d 1438 (Fed Cir. 1991). In particular, in determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). Appellants respectfully assert that the Examiner does not show and the references do not teach or suggest, separately or in

AUS920010947US1

PATENT
10/004,664

combination, returning an unused portion of said advancement token to a promotion system for storage in association with said caller. In addition, Applicants respectfully assert that there is not any suggestion or motivation, in Busey and Walker et al. or in the knowledge generally available to one of ordinary skill in the art, to modify Busey and Walker et al. to teach the claimed invention.

With regard to claim 8, the Examiner cites Busey as lacking the limitation specifying “returning an unused portion of said advancement token to a promotion system...”. [Office Action, p. 6] Instead, the Examiner cites Walker as teaching “a credit given to a caller’s charge card or account number” on page 4, lines 2-3 and cites this teaching as reading on promotion system of the present invention [Office Action, p. 6] The Examiner then states:

“It is well known, that various companies allow a customer to ask for a credit refund, if for example, thus, it would have been obvious to one of ordinary skill in the art to modify Busey’s system in view of Walker and in this manner provide a credit or refund to a customer (i.e. caller) that is not satisfied with the service (i.e. did not move up as expected, waited a longer time, etc.).” [Office Action, p. 6]

First, Applicants assert that returning an unused portion of said advancement token to a promotion system for storage in association with said caller is not taught by Busey in view of Walker et al. because Walker et al. does not teach a promotion system. Page 4, lines 2-3 of Walker et al., as cited by the Examiner as teaching “a credit given to a caller’s charge card or account number” read:

“of his/her telephone and entering a credit card number, an account number or indicating some other method of payment.”

Applicants respectfully note that Walker does not teach “a credit given to a caller’s charge card or account number” as cited by the Examiner. Walker merely teaches that a caller may enter a credit card number or other method of payment, but does not teach crediting that credit card number or other method of payment. Therefore, Walker also does not teach crediting a promotion system or a promotion system. In particular, because Walker does not teach crediting a promotion system, it also would not be obvious to modify Busey’s system in view of Walker to

AUS920010947US1

36

PATENT
10/004,664

provide a credit or refund to a customer. In contrast, the present invention teaches a promotion system, to which an unused portion of an advancement token is returned.

Second, Applicants assert that returning an unused portion of said advancement token to a promotion system for storage in association with said caller is not taught by Busey in view of Walker et al. because the invention does not teach crediting an account with a credit or refund if a caller is not satisfied with the service. The Examiner states that "it would have been obvious to one of ordinary skill in the art to modify Busey's system in view of Walker and in this manner provide a credit or refund to a customer (i.e. caller) that is not satisfied with the service (i.e. did not move up as expected, waited a longer time, etc.)." [Office Action, p. 6] In addition, Applicants note that in the rejection, the Examiner states "it is well known, that various companies allow a customer to ask for a credit refund, if for example..." but the Examiner does not provide an example. Applicants respectfully note that the Examiner describes a refund system, where a customer receives a credit or refund for that which the customer paid if the customer is not satisfied with the service already consumed. The Examiner does not show how Busey in view of Walker et al. and in view of credit refund systems teach or suggest returning an unused portion of a token (rather than a refund of the token), where the unused portion implies that one portion of the token is used for services and another portion not used for services is returned (rather than for unsatisfactory consumed services).

In conclusion, for the foregoing reasons, Applicants respectfully assert that prima facie obviousness is not established for claims 8, 18, and 26 because at least one element of each of claims 8, 18, and 26, separately or in combination with claims 1, 11, and 21, is not taught or suggested by Busey in view of Walker et al., separately or in combination as required under 35 U.S.C. §103(a). Because a prima facie case of obviousness is not established, Applicants respectfully request that Examiner reverse the rejection of claims 8, 18, and 26 and allow the claims.

AUS920010947US1

37

PATENT
10/004,664**Claims 31-32, 34-38, 43-44, 46-50, and 54-56**

Claims 31-32, 34-38, 43-44, 46-50, and 54-56 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Busey in view of Philonenko (US 2002/013199). [Office Action, pp. 6, 7] With regard to claims 31-32, 34-38, 43-44, 46-50, and 54-56, Applicants respectfully assert that because prima facie obviousness is not established for claims 29, 41 and 53, at least by virtue of their dependency on claims 29, 41, and 53, Busey does not teach or suggest the features of dependent claims 31-32, 34-38, 43-44, 46-50, and 54-56 under U.S.C. §103(a) and therefore Busey in view of Philonenko et al. also does not teach or suggest the features of the combination of claims 29, 41, and 53 with claims 31-32, 34-38, 43-44, 46-50, and 54-56 respectively. Because a prima facie case of obviousness is not established for claims 31-32, 34-38, 43-44, 46-50, and 54-56, Applicants respectfully request allowance of claims 31-32, 34-38, 43-44, 46-50, and 54-56.

Claims 5 and 15

Claims 5 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Busey in view of Walker et al. (US 6,178, 240) and further in view of Philonenko (US 2002/013199). [Office Action, pp. 6, 7] Applicants respectfully assert that because prima facie obviousness is not established for claims 1 and 11 at least by virtue of their dependency on claims 1 and 11, Busey does not teach or suggest the features of dependent claims 5 and 15 under U.S.C. §103(a) and therefore Busey in view of Walker et al. and Philonenko also does not teach or suggest the features of the combination of claims 1 and 11 with claims 5 and 15 respectively. Because a prima facie case of obviousness is not established for claims 5 and 15, Applicants respectfully request allowance of claims 5 and 15.

Claims 30 and 42

Claims 30 and 42 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Busey in view of Johnson et al. (US 2002/0196927). [Office Action, p. 9] Because prima facie obviousness is not established for claims 29 and 41, at least by virtue of their dependency on

AUS920010947US1

38

PATENT
10/004,664

claims 29 and 41, Busey does not teach or suggest the features of dependent claims 30 and 42 and therefore Busey in view of Johnson et al. also does not teach or suggest the features of the combination of claims 29 and 41 with claims 30 and 42 respectively under U.S.C. §103(a). Because a prima facie case of obviousness is not established for claims 30 and 42, Applicants respectfully request allowance of claims 30 and 42.

Claims 33 and 45

Claims 33 and 45 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Busey in view of Philonenko (US 2002/013199), as applied to claims 31-32, 43-44, and 54 and further in view of Farfan (US 2002/0131399). [Office Action, p. 10] Because prima facie obviousness is not established for claims 29 and 41, at least by virtue of their dependency on claims 29 and 41, Busey does not teach or suggest the features of dependent claims 33 and 45 and therefore Busey in view of Johnson et al. also does not teach or suggest the features of the combination of claims 29 and 41 with claims 33 and 45 respectively under U.S.C. §103(a). Because a prima facie case of obviousness is not established for claims 33 and 45, Applicants respectfully request allowance of claims 33 and 45.

AUS920010947US1

39


PATENT
10/004,664

Conclusion

Applicants note the citation of pertinent prior art cited by the Examiner.

In view of the foregoing, withdrawal of the rejections and the allowance of the current pending claims is respectfully requested. If the Examiner feels that the pending claims could be allowed with minor changes, the Examiner is invited to telephone the undersigned to discuss an Examiner's Amendment.

Respectfully submitted,

 on 3/2/05

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AUS920010947US1

40